



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

ELBERT MITCHELL,

Petitioner,

-v-

DALE ARTUS, Superintendent, Clinton  
 Correctional Facility,

Respondent.

LAURA TAYLOR SWAIN, United States District Judge

**ORDER ADOPTING REPORT & RECOMMENDATION**

The Court has reviewed Magistrate Judge Peck's June 2, 2008, Report and Recommendation (the "Report") which recommends that petitioner Elbert Mitchell's petition for writ of habeas corpus, pursuant to 28 U.S.C. § 2254, be denied. No objections to the Report have been received.

In reviewing a report and recommendation, a district court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C.A. § 636(b)(1)(C) (West 1993). "In a case such as this one, where no timely objection has been made, a district court need only satisfy itself that there is no clear error on the face of the record." Johnson v. New York University School of Education, No. 00 Civ. 8117, at \*1, 2003 WL 21433443 (S.D.N.Y. June 16, 2003).

The Court has reviewed carefully Magistrate Judge Peck's thorough and well-reasoned Report and Recommendation and finds no clear error. The Court therefore adopts the Report in its entirety for the reasons stated therein. The Court further determines that Petitioner

has not made a substantial showing of the denial of a constitutional right pursuant to 28 U.S.C. § 2253(c)(2), and a certificate of appealability therefore will not issue. Accordingly, the petition is denied.

SO ORDERED.

Dated: New York, New York  
August 21, 2008



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LAURA TAYLOR SWAIN  
United States District Judge